BEFORE THE BOARD OF PODIATRIC MEDICINE DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:))
•) File No: 1B-2000-107550
JOSEPH GAROFALO, D.P.M.)
Podiatric Medical)
License No. E-1384)
)
Respondent.	_)
DECICI	ON AND ODDED
<u>DECISI</u>	ON AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Board of Podiatric Medicine, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 26, 2002

DATED July 25, 2002.

BOARD OF PODIATRIC MEDICINE

Paul J. Califano, D.P.M.

President

1	BILL LOCKYER, Attorney General		
2	1401114 D. MITHER 10, DEED 110, 704/1		
3	Deputy Attorney General California Department of Justice		
4	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
5	Telephone: (213) 897-8644 Facsimile: (213) 897-1071		
6	E-mail: richard.marino@doj.ca.gov		
7	Attorneys for Complainant		
8	BOARD OF PODIATRIC MEDICINE		
9			
10	STATE OF CAL	IFORNIA	
11	In the Matter of the Accusation Against:	Case No. 1B-2000-107550	
12	JOSEPH GAROFALO, D.P.M.	OAH No. L-20001030055	
13	Podiatric Medical License Number E-1384,	STIPULATED SETTLEMENT AND	
14	Respondent.	DISCIPLINARY ORDER	
15			
16			
17	In the interest of a prompt and speedy settlement of this matter, consistent with		
18	the public interest and the responsibility of the Board of Podiatric Medicine of the Department of		
19	Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and		
20.	Disciplinary Order which will be submitted to the Board for approval and adoption as the final		
21	disposition of the Accusation.		
22	PARTIES		
23	1. James Rathlesberger (Complainant) is the Executive Officer of the Board		
24	of Podiatric Medicine. He brought this action solely in his official capacity and is represented in		
25	this matter by Bill Lockyer, Attorney General of the State of California, by Richard D. Marino,		
26	Deputy Attorney General.		
27	2. Respondent Joseph Garofalo,	D.P.M. (Respondent) is represented in this	

proceeding by attorney C. Keith Greer, whose address is 11440 W. Bernardo Court, Ste. 280,

3. On or about August 13, 1970, the Board of Podiatric Medicine,
Department of Consumer Affairs, State of California (Board) issued Podiatric Medicine License
Number E1384 to Joseph Garofalo, D.P.M. ("Respondent"). The license was in full force and
effect at all times relevant to the charges brought herein and will expire on October 31, 2003,
unless renewed.

JURISDICTION

4. Accusation No. 1B-2000-107550 was brought before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 24, 2001. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1B-2000-107550 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1B-2000-107550. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in

9. Respondent agrees that his Podiatric Medical License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Podiatric Medicine or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

- Medicine. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Podiatric Medicine may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile or other copies of this Stipulated Settlement and Disciplinary Order, including the signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Podiatric Medical License Number E1384, issued to Respondent Joseph Garofalo, D.P.M., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

- of this decision, respondent shall submit to the BPM or its designee, for its prior approval, an intensive clinical training program. The exact number of hours and the specific content of the program shall be determined by the BPM or its designee and will be in addition to the Continuing Medical Education requirements for relicensure. Respondent shall successfully complete the training program during the first year of probation and may be required to pass an examination approved by the BPM, related to the program's contents.
- 2. <u>PROBATION COSTS</u> Respondent shall pay the administrative costs incurred by the BPM associated with probation monitoring each and every year of probation. Such costs shall be payable to the BPM at the end of each fiscal year. Respondent will be provided with an invoice at the close of each fiscal year which must be paid within 30 days of receipt. The final invoice will be provided upon termination of probation and is also due and payable within 30 days of receipt. Failure to pay such costs shall be considered a violation of probation.
- 3. NOTICE TO EMPLOYEES Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which respondent has been disciplined and the terms and conditions of probation, to all employees involved in his practice. Within fifteen (15) days of the effective date of this Decision, respondent shall cause his employees to report to the BPM in writing, acknowledging the employees have read the Accusation and Decision in the case and understand respondent's terms and conditions of probation.

- 4. <u>CHANGES OF EMPLOYMENT</u> Respondent shall notify the BPM in writing, through the assigned probation officer, of any and all changes of employment, location, and address within thirty (30) days of such change.
- 5. RECOVERY OF INVESTIGATION & PROSECUTION COSTS The respondent is hereby ordered to reimburse the BPM the amount of \$11,500, less the amount paid by the respondent to participate in the clinical training program described in paragraph 1, above, within 30 days of the respondent having completed the clinical training program for the recovery of the actual and reasonable costs of the investigation and prosecution of this matter as provided for in Section 2497.5 of the Business and Professions Code. Failure to reimburse the BPM's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the BPM agrees in writing to payment by an installment plan because of financial hardship.
- 6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine in California.
- 7. QUARTERLY REPORTS Respondent shall submit quarterly declarations, under penalty of perjury, on forms provided by the BPM, stating whether there has been compliance with all the conditions of probation.

Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly declarations under penalty of perjury.

- 8. <u>SURVEILLANCE PROGRAM</u> Respondent shall comply with the BPM's probation surveillance program.
- 9. <u>INTERVIEW WITH PODIATRIC MEDICAL CONSULTANT</u>
 Respondent shall appear in person for interviews with the BPM's medical consultant, upon request, at various intervals and with reasonable notice.
- 10. TOLLING FOR CESSATION OF PRACTICE In the event the respondent fails to satisfactorily complete any provision of the order of probation, which results in the cessation of practice, all other provisions of probation other than the submission of quarterly reports shall be held in abeyance until respondent is permitted to resume the practice of

podiatry. All provisions of probation shall recommence on the effective date of resumption of practice. Periods of cessation of practice will not apply to the reduction of the probationary period.

- 11. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event respondent should leave California to reside or to practice outside the state, respondent must notify the BPM in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.
- 12. <u>COMPLETION OF PROBATION</u> Upon successful completion of probation, respondent's certificate will be fully restored.
- respect, the BPM, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the BPM shall have continuing jurisdiction until the matter is final, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against respondent.
- 14. COMPLIANCE WITH REQUIRED CONTINUING MEDICAL

 EDUCATION Respondent shall submit satisfactory proof biennially to the BPM of compliance with the requirement to complete fifty (50) hours of approved continuing medical education for re-licensure during each two (2) year renewal period.

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I have carefully road the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, C. Keith Greer, Esq. I understand the stipulation and the effect it will have on my Podiatric Medical License Number E1384. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Podiatric Medicine.

ACCEPTANCE

DLV SUKGILENIER

DATED: 10 May 07

JOSEPH GAROFALO, D.P.M.
Respondent

I have read and fully discussed with Respondent Joseph Garofalo, D.P.M. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _ _

C. KEITH GREER, Esq. Attorney for Respondent

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Recetved: 5/10/02 14:

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, C. Keith Greer, Esq. I understand the stipulation and the effect it will have on my Podiatric Medical License Number E1384. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Podiatric Medicine.

DATED:

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27 28 JOSEPH GAROFALO, D.P.M. Respondent

I have read and fully discussed with Respondent Joseph Garofalo, D.P.M. the terms and conditions and other matters contained in the above Stipulated Settlement and

Disciplinary Order. I approve its form and content,

Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Podiatric Medicine of the Department of Consumer Affairs.

DATED: June 14, 2002

BILL LOCKYER, Attorney General of the State of California

RICHARD D. MARINO Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03576160-la2000ad0058 Stipulation 8/31/01

Exhibit A
Accusation No. 1B-2000-107550

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA

SACRAMENTO _____

T ZUOI

of the State of California

RICHARD D. MARINO, State Bar No. 90471 Deputy Attorney General

California Department of Justice

300 South Spring Street, Suite 1702 Los Angeles, California 90013

Telephone: (213) 897-8644 Facsimile: (213) 897-1071

Attorneys for Complainant

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BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS

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In the Matter of the Accusation Against:

in the Matter of the Accusation Against.

12 JOSEPH GAROFALO, D.P.M. 122 S. Patterson Ave., No. 101

13 Santa Barbara, CA 93111

Podiatric Medicine License No. E-1384,

Respondent.

Case No. 1B-2000-107550

ACCUSATION

Complainant alleges:

PARTIES

1. Jim Rathlesberger ("Complainant") brings this Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer Affairs, State of California ("Board").

STATE OF CALIFORNIA

2. On or about August 13, 1970, the Board issued Podiatric Medicine License Number E-1384 to Joseph Garofalo, D.P.M. ("Respondent"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2001, unless renewed.

JURISDICTION

This Accusation is brought before the Board under the authority of the following sections of the Business and Professions Code ("Code").

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4. Section 2222, in relevant part, provides:

The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

- 5. Section 2228 of the Code states the authority of the board or a division of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:
 - (a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or division or the administrative law judge.
 - (b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the division. If an examination is ordered, the board or division shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.
 - (c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.
 - (d) Providing the option of alternative community service in cases other than violations relating to quality of care, as defined by the Division of Medical Quality.
- 6. Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.
 - (b) Gross negligence.
 - (c) Repeated negligent acts.
 - (d) Incompetence.
- (e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.
- (f) Any action or conduct which would have warranted the denial of a certificate.
 - 7. Section 2236 of the Code, in relevant part, provides:

The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

- 8. Section 2497 of the Code, in relevant part, provides:
- (a) The board may order the denial of an application for, or the suspension of, or the revocation of, or the imposition of probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with Section 2220) in accordance with Section 2222.

COST RECOVERY

- 9. Section 2497.5 of the Code, in relevant part, provides:
- (a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

REIMBURSEMENT FOR MEDI-CAL CLAIMS

10. Section 14124.12, subdivision (a), of the Welfare and Institutions Code, in

relevant part, provides:

Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

- 11. Respondent is subject to disciplinary action under section 2297, in connection with section 2234, subdivision (b), in that respondent was grossly negligent during the care, treatment and management of patient M.L.¹ The facts and circumstances are as follows:
 - A. On or about and during 1996, M.L., then 58 years old, developed an ulcer beneath the fifth metatarsal of his right foot. Patient M.L. initially was treated by G.D., M.D. Patient M.L. then was referred to G.F., M.D.,

^{1.} All references to individuals other than respondent in this initial pleading are by initials only. The true name of each individual is known to respondent and, in any event, will be disclosed to him upon his timely written request for discovery under Government Code section 11507.6.

who treated patient M.L. on or about and between July and September 1996. Treatment included debridement, doppler studies, and antibiotic therapy. Following a denial by patient M.L.'s insurance carrier for more aggressive treatment, Dr. F. referred patient M.L. to D.D., M.D. Dr. D. recommended the continuation of the conservative care with foam padding. Dr. D. believed that because of a bounding posterior tibial pulse that the wound would heal. Dr. D. recommended a tri-phasic bone scan to rule out osteomyelitis if the ulcer failed to respond to the suggested treatment.

- B. M.L.'s medical history included diabetes mellitus type I insulin dependent, diabetic neuropathy, hypertension, and hypthyroidism. M.L.'s medical history also reflected a poor compliance record in self medication and care for his diabetes and related complications.
- C. On or about September 30, 1996, upon Dr. D.'s referral, patient M.L. presented to respondent at his office. Respondent's initial examination found a well localized ulcer beneath the fifth metatarsal head with evidence of pedal edema and purulent exudate. Respondent made the following diagnosis; peripheral vascular disease, ulcer sub 5th metatarsal, and insulin dependent diabetes mellitus.
- D. Respondent saw patient M.L. on 44 occasions between September 1996 and April 1998. Respondent's treatment consisted of debridement of the ulcer, oral antibiotics, foot soaks, and protective padding.
- E. Most, if not all, of the patient chart notes, prepared and maintained by respondent for patient M.L., indicate dictated but not read and are unsigned by respondent. According to these records:
 - During patient M.L.'s initial visit to respondent, on September 30, 1996, respondent conducted a brief examination with no reference to past hospitalizations, current medications, or detailed past medical history.

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- 2) Upon his first examination of patient M.L., respondent found an ulcer under the 5th metatarsal head with swelling and purulent exudate present. There were no posterior tibial or dorsalis pulses. A diagnosis of peripheral vascular disease, ulcer, and insulin dependent diabetes mellitus was made.
- Respondent did not measure the ulcer until November 1, 1996. On that date, respondent measured the ulcer at 1 cm x .05 cm. On November 18, 1996, respondent measured the ulcer at 1 cm x 1.05 cm. Respondent added chronic renal disease to the diagnosis.
- 4) On November 27, 1996, respondent added cellulitis to the diagnosis.
- 5) On February 13, April 22, August 5, and August 26, 1996, blood was drawn and a culture and sensitivity performed.

 Respondent did not obtain the laboratory results or, if he did so, respondent did not note the laboratory results in the patient's medical chart.
- on or about January 22, 1998, respondent prescribed patient M.L. Ciprofloxcin 750 mg b.i.d. and Augmentin 500 mg b.i.d. Respondent did not perform testing for creatinine clearance or for renal function prior to and after prescribing patient M.L. Ciprofloxcin or did not place the testing results in the patient's medical chart.
- 7) On March 25, 1998, and again on April 8, 1998, respondent measured the ulcer to be 1.5 cm x 1.5 cm.
- 8) A laboratory report, dated April 4, 1998, of a culture taken from patient M.L.'s ulcer showed streptococcus viridans,

heavy growth.

- Patient M.L.'s last visit to respondent was on April 29, 1998. Respondent recommended the same treatment that he had been administering be continued, including Ciprofloxcin 750 mg b.i.d.
- F. On or about May 6, 1998, Dr. D. admitted M.L. to Santa Barbara Cottage Hospital with a diagnosis of acute osteomyelitis, possible renal failure, and uncontrolled diabetes mellitus. Radiographs of the right foot showed destruction of a major portion of the 5th metatarsal consistent with osteomyelitis and possible bone infection of the 2nd and 3rd metatarsal with evidence of a subluxation at Lisfranc's joint. A below-the-knee amputation of patient M.L.'s right leg was performed on May 8, 1998. Patient M.L. was discharged on May 21, 1998.
- H. The following acts and omissions of respondent during the care, treatment and management of patient M.L., separately and collectively, constitute extreme departures from the standard of care:
 - Failing to recognize an acute infectious episode requiring immediate hospitalization;
 - 2) Attempting to control a serious infection of a noncompliant patient on an outpatient basis;
 - 3) Failing to refer patient M.L. to an infectious disease specialist; and,
 - 4) Failing to order any chemistry profiles or monitor patient M.L.'s renal function when prescribing Ciprofloxcin to a patient with known renal disease.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

12. Respondent is subject to disciplinary action under section 2297, in

connection with section 2234, subdivision (d), in that respondent demonstrated a lack of skill and knowledge necessary to discharge the duties and responsibilities of his licensure during the care, treatment and management of patient M.L. The facts and circumstances are as follows:

A. Complainant refers to and, by this reference, incorporates herein paragraph 11, subparagraphs A through H, inclusive, above, as though fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

- 13. Respondent is subject to disciplinary action under section 2297, in connection with section 2234, generally, in that respondent committed unprofessional conduct during the care, treatment and management of patient M.L. The facts and circumstances are as follows:
 - A. Complainant refers to and, by this reference, incorporates herein paragraph 11, subparagraphs A through H, inclusive, above, as though fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

- 1. Revoking or suspending Podiatric Medicine License Number E-1384, issued to Respondent Joseph Garofalo, D.P.M.;
- Ordering Respondent Joseph Garofalo, D.P.M. to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5, and, if placed on probation, the cost of probation monitoring; and,
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: January 24, 2001

LA RATHLESBERGER

Executive Officer

Board of Podiatric Medicine

State of California Complainant

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